

1 BRAD D. BRIAN (State Bar No. 79001)
brad.brian@mto.com
2 HENRY WEISSMANN (State Bar No. 132418)
henry.weissmann@mto.com
3 DANIEL B. LEVIN (State Bar No. 226044)
daniel.levin@mto.com
4 MELINDA E. LeMOINE (State Bar No. 235670)
melinda.lemoine@mto.com
5 THOMAS PAUL CLANCY (State Bar No. 295195)
thomas.clancy@mto.com
6 JORDAN X. NAVARRETTE (State Bar No. 306143)
jordan.navarrette@mto.com
7 MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue
8 Fiftieth Floor
9 Los Angeles, California 90071-1560
10 Telephone: (213) 683-9100
11 Facsimile: (213) 687-3702

12 Attorneys for Defendants
13 PLAINS ALL AMERICAN PIPELINE, L.P.
14 and PLAINS PIPELINE, L.P.

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 KEITH ANDREWS, an individual;
18 TIFFANI ANDREWS, an individual;
BACIU FAMILY LLC, a California
19 limited Liability company, ROBERT
BOYDSTON, an individual; CAPTAIN
20 JACK'S SANTA BARBARA TOURS,
LLC, a California limited liability
21 company; MORGAN CASTAGNOLA
an individual; CRAB COWBOYS.
22 LLC, a California limited liability
company; THE EAGLE FLEET. LLC.
23 a California limited liability company;
ZACHARY FRAZIER, an individual;
24 MIKE GANDALL. an individual;
ALEXANDRA B. GEREMIA as
25 Trustee for the Geremia Family Trust
dated 8/5/1998; JIM GUELKER. an
26 individual; JACQUES HABRA, an
27 individual; ISURF, LLC, a California
28

Case No. 2:15-cv-04113-PSG-JEM

[Consolidated with Case Nos. 2:15-cv-04573-PSG (JEMx), 2:15-cv-04759-PSG (JEMx), 2:15-cv-04989-PSG (JEMx), 2:15-cv-05118-PSG (JEMx), 2:15-cv-07051-PSG (JEMx)]

**NOTICE OF MOTION AND
MOTION FOR PARTIAL
SUMMARY JUDGMENT OF
PLAINTIFFS' CLAIMS**

Judge: Hon. Philip S. Gutierrez
Date: August 28, 2017
Time: 1:30 p.m.
Location: Courtroom 6A

2:15-cv-04113-PSG-JEM

1 limited liability company; MARK
2 KIRKHART, an individual; MARY
3 KIRKHART, an individual; JAMIE
4 KLEIN, an individual; RICHARD
5 LILYGREN, an individual; HWA
6 HONG MUH, an individual; OCEAN
7 ANGEL IV, LLC, a California limited
8 liability company; PACIFIC RIM
9 FISHERIES. INC, a California
10 corporation; SARAH RATHBONE, an
11 individual; COMMUNITY SEAFOOD
12 LLC, a California limited liability
13 company; SANTA BARBARA UNI,
INC., a California corporation;
SOUTHERN CAL SEAFOOD, INC., a
California corporation; TRACTIDE
MARINE CORP., a California
corporation; WEI INTERNATIONAL
TRADING INC., a California
corporation and STEPHEN WILSON,
an individual; individually and on
behalf of others similarly situated,

14 Plaintiffs,

15 vs.

16 PLAINS ALL AMERICAN PIPELINE,
17 L.P., a Delaware limited partnership,
18 and PLAINS PIPELINE, L.P., a Texas
19 limited partnership, and JOHN DOES 1
through 10,

20 Defendants.

1 TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

2 NOTICE IS HEREBY GIVEN that on August 28, 2017, or as soon thereafter
 3 as the matter may be heard, in Courtroom 6A of the United States District Court,
 4 Central District of California, located at First Street Courthouse, 350 West 1st
 5 Street, Courtroom 6A, 6th Floor, Los Angeles, California 90012-4565, Defendants
 6 Plains Pipeline L.P. and Plains All American Pipeline, L.P. (“Plains”), will and
 7 hereby do move for partial summary judgment on the claims brought by plaintiffs
 8 Robert Boydston, Zachary Frazier, Jim Guelker, Richard Lilygren, TracTide Marine
 9 Corp., and Stephen Wilson (collectively the “Oil Industry Plaintiffs”). This motion
 10 is made following the conference of counsel pursuant to L.R. 7-3 which took place
 11 on April 25, 2017.

12 This motion is made on the following grounds:

- 13 • The OSPRA claim fails because the Oil Industry Plaintiffs seek lost wages
 14 or profits, which they claim were caused by the non-operation of Lines
 15 901 and 903. As this Court has ruled, losses resulting from the non-
 16 operation of the pipeline are not compensable under OSPRA.
- 17 • The ultrahazardous liability claim fails because economic losses are not
 18 the sort of harms that would make oil transportation ultrahazardous.
- 19 • The Oil Industry Plaintiffs cannot recover under a theory of negligence or
 20 negligent interference with economic advantage. The economic loss rule
 21 bars negligence claims by third parties for recovery of pure economic loss
 22 with no accompanying physical injury. The Oil Industry Plaintiffs do not
 23 fit into the narrow “special relationship” exception to the economic loss
 24 rule because, amongst other reasons, Plains’ transportation of oil was not
 25 intended to specifically affect the Oil Industry Plaintiffs.

- The UCL claim fails because the harms claimed by the Oil Industry Plaintiffs were not caused by the violations of law they allege, and because they lack Article III standing to seek injunctive relief.
- The Oil Industry Plaintiffs' public nuisance claim fails because their alleged harms were not caused by the alleged public nuisance, and because they lack Article III standing to seek injunctive relief.

This motion is based upon this Notice of Motion and Motion, the accompanying Memorandum In Support Thereof, Statement of Uncontroverted Facts and Conclusions of Law, Request for Judicial Notice, Declaration of Thomas P. Clancy and the exhibits attached thereto, all pleadings and papers on file in this action, and upon such other matters as may be presented to the Court at the time of the hearing.

DATED: July 6, 2017

Respectfully submitted,
MUNGER, TOLLES & OLSON LLP
BRAD D. BRIAN
HENRY WEISSMANN
DANIEL B. LEVIN
MELINDA E. LeMOINE
THOMAS PAUL CLANCY
JORDAN X. NAVARRETTE

By: /s/ Henry Weissmann
HENRY WEISSMANN
Attorneys for Defendants PLAINS ALL
AMERICAN PIPELINE, L.P. and PLAINS
PIPELINE, L.P.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was filed electronically on July 6, 2017. Therefore, this document was served on all counsel who are deemed to have consented to electronic service.

/s/ Henry Weissmann
HENRY WEISSMANN